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IN THE

Supreme Court of the United States

October Term, 1957

No. 440-441

MORTON SOBELL, *Petitioner*,

vs.

UNITED STATES OF AMERICA.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF *AMICI CURIAE*

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The undersigned, as counsel for those hereafter named who have authorized the inclusion of their names in an *amicus curiae* brief, respectfully move this Honorable Court for permission to file the accompanying brief, as *amici curiae*. The attorneys for the petitioner have consented to the filing of this brief. Permission for leave to file has been requested from the Solicitor General and is under consideration by him.

WHEREFORE, it is respectfully requested that this Honorable Court grant this motion for leave to file the annexed brief as *amici curiae*.

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BRIEF AS FRIENDS OF THE COURT

It is with the deepest regard and affection, as citizens, for the integrity of our system of justice, our country's standing in the community of nations, and the fair administration of federal criminal law that the persons named below have authorized an *amicus curiae* brief to be filed in their behalf. The importance of these considerations is overriding. The propriety of their presentation rests in the tradition of this Court to dispense justice in the light of constitutional principle and paramount national interest.

In the present motion before the Court, the petitioner seeks a hearing, under 28 U. S. C. 2255, upon his claim that the prosecution knowingly used false evidence and perjured testimony to obtain his conviction. Throughout the proceedings in the lower courts the prosecution has failed to deny these charges. It is this failure to come forward and answer the charges and facts alleged in the petitioner's motion papers that is our primary concern. It is our belief that the refusal to deny or to admit the

petitioner's claims could do incalculable harm to our reputation as a nation believing in and exercising justice under law, to our position in the world community and to our administration of justice.

We deal here with a cause celebre. This is a case which has stirred the minds and hearts of men and women throughout the world. This case has provided and continues to provide an index of the American concept of justice and due process.

In this setting the prosecution's refusal to meet the petitioner's factual claims is most disturbing. We assume, without conceding, that there is no technical legal compulsion for the prosecution to answer if it believes the motion to be insufficient on its face. But by its silence the prosecution has cast a shadow of doubt upon its function of rendering justice. By failing to deny the charge and standing upon dry technicality, the prosecution undoubtedly hopes to avoid raising factual issues to be resolved by a hearing. But, in reality, it thereby draws a picture of a great nation, with its ubiquitous power, reluctant to meet the accusations of an incarcerated petitioner that his conviction was fraudulently obtained.

Such a picture can only be to the detriment of our nation. The prosecution's actions can only stir questions of doubt as to the character of our criminal justice at a time when the world-wide battle for the minds of men is at fever pitch. We have the utmost confidence that once the true facts, whatever they may be, are before the court, justice under the law and the constitution will result.

A strong and free nation need not fear the open and just hearing that would take place here. If the claim of fraudulently obtained conviction is without merit, let the nation and the world have such a resolution by our traditional judicial hearing. If the true state of the facts can be explained so as to be justified, let it be so determined

by hearing. If the contentions of the petitioner are unfortunately true, let the nation and the world know that we maintain not only justice, but also the ability to correct, by due process, those miscarriages of justice which were a product of untempered passion now since confined and repelled by the mandate of our constitutional system.

As a legal tactic the prosecution's actions do not measure up to the standard of criminal justice in which we pride ourselves. The government's attorney is not merely the prosecutor. As this Court pointed out in *Berger* v. *United States*, 295 U. S. at 88, he is the representative of the nation, "Whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution, is not that it shall win a case, but that justice shall be done * * *. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

It is our belief that the prosecution should answer the charges and proceed to a hearing on the facts. This is not a mere question of expediency of the moment. An issue of principle is raised going to the core of the fair administration of federal criminal justice. The seriousness of the charge of the prosecution's knowing use of false evidence and perjured testimony, developed with detail and specification, more than warrants a hearing on its merits. It compels a hearing. As Mr. Justice Frankfurter recently had occasion to say in *Communist Party* v. *Subversive Activities Control Board*, 351 U. S. at 124:

> The untainted administration of justice is certainly one of the most cherished aspects of our institution. Its observance is one of our proudest boasts. This Court is charged with supervisory functions in relation to proceedings in the federal courts. Therefore, fastidious regard for the honor of the administration of justice requires the Court to make certain

that the doing of justice be made so manifest that only irrational or perverse claims of its disregard can be asserted.

Furthermore, the petitioner's moving papers touch on the delicate and important issue of our relations with other sovereign nations. The petitioner has alleged that he was abducted by agents of the prosecution from the territory of the United States of Mexico in violation of an outstanding treaty between our country and Mexico. Our country stands as the greatest nation in a world community of great and small countries. We are a leader of sovereign nations. By our actions we must set an unimpeachable example of respect for the sovereign integrity of our smaller neighbors. We can do no less without irrevocably offending others and degrading our democratic system.

By failing to respond to the petitioner's claims, the prosecution, in effect, has done a disservice to our role among the countries of the world. As long as the petitioner's claim remains unanswered the doubt remains that our country violated the national sovereignty of a friendly neighbor in disregard of an existing treaty.

Finally, we wish to indicate our concern with the historical legal context in which the refusal to answer the petitioner's charges, contained in his motion for a hearing, takes place. Petitioner seeks a hearing under Section 2255. Such a statutory hearing is in the nature of and affords the same rights as a habeas corpus proceeding. Thus, his motion has its source in "the most celebrated writ in the English law" (3 Blackstone's Commentaries 129). Undoubtedly, this is only proper. The Great Writ has historically been the protector of the liberty of the subject. Its role was forged in the struggle against the exercise of arbitrary power by the English Crown in the 16th and 17th centuries culminating in the Habeas Corpus Act of 1679, 31 Charles II, c. 2.

The prosecution's attempt to avoid the spirit and letter of this fundamental legal provision for hearing, we believe, is, itself, reproachable. If we, as Americans, are to continue to uphold the Great Writ of Habeas Corpus as a symbol of our democratic process it must maintain its vitality in situations such as the instant one. The Bill of Rights permits no digressions from its mandates. As this Court recently stated in *Reid* v. *Covert*, 354 U. S. at 39: "Slight encroachments create new boundaries from which legions of power can seek new territory to capture." A Section 2255 hearing, as Mr. Justice Harlan stated in *Chessman* v. *Teets*, 354 U. S. at 165, is available "no matter how heinous the crime in question and no matter how guilty an accused may ultimately be found to be."

In the absence of an answer to the petitioner's charges by the prosecution, and without a hearing, fundamental questions of policy and justice will remain forever open. Without a hearing, not even history will be able to record whether our precious and inviolate rights were able to surmount and overcome the prejudices and biases of the moment. An order for a hearing can only be a victory for our democratic system of justice. To this end and with this concern we have submitted this *amici curiae* brief.

CONCLUSION

We urge this Court to grant certiorari to consider petitioner's claim to a hearing.

Respectfully submitted,

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Of Counsel:
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* The full list of persons who have authorized the inclusion of their names as *amici curiae* has been filed with the clerk of the Court.